



**REPORT**

**CONCERNING THE USE OF DEADLY FORCE**

**BY THE SALEM POLICE DEPARTMENT**

**IN THE**

**DEATH OF KIP PEPIN**

## **Introduction**

The Office of the Attorney General and the Major Crime Unit of the New Hampshire State Police conducted an investigation into the February 4, 2005 shooting of Kip Pepin by two Salem Police officers. This investigation included the processing of the shooting scene, interviews of police and civilian witnesses, the submission of physical evidence to the New Hampshire State Police Forensic Laboratory, and a review of the respective officers' training files.

The findings and conclusions contained in this report are based on investigative reports, interview reports, the transcripts of witness interviews, ballistic testing, forensic and autopsy reports, and conversations with investigators. Witnesses interviewed were Phillip Bellerose, Judy and Wayne Lawlor, Russell Vaillancourt, Paul Connor, William Gianetti, Albert and Sandra Wenning, Charles O'Connell, William Alicea, Jim Ribaud, Salem Police Officer Joel Dolan, Salem Police Officer Michael Kelly, Salem Police Officer Paul Benoit, Michael Scanlon, Stephen McKenna, Warren Seckendorf, Kevin Campbell, Neil Carney, John Judson, Salem Police Officer Mark Donahue, Salem Police Master Patrolman Brian Bodenrader, Salem Police Sergeant Wesley Decker, William Lopez, John Hall, Christine Colpitts, Kenny Pilz, James Deroche, Janis Boomhower, Farraha Densmore, and Colleen Ostberg.

The Salem Police Department reported this incident immediately to the Office of the Attorney General and the New Hampshire State Police and cooperated fully with the ensuing investigation. Salem Police Department personnel complied with all requests made of them by the State Police and the Attorney General's Office.

## **Incident Overview**

In the early morning hours of Friday, February 4, 2005, Salem Police Sergeant Wesley Decker and Salem Master Patrolman Brian Bodenrader shot 27-year-old Kip Pepin multiple times during an incident in front of 18 Pleasant Street in Salem. Pepin was armed with a loaded 12-gauge shotgun at the time.

The purpose of this report is to summarize the Attorney General's findings and conclusions. For the reasons discussed in detail below, the Attorney General has concluded the circumstances that confronted the Salem Police officers who fired their weapons at Pepin justified their use of deadly force.

## **Factual Findings**

### **The Police Officers**

Wesley Decker has been employed by the Salem Police Department since 1997. He was promoted to the position of Sergeant in 2002. Sergeant Decker is a graduate of the 112<sup>th</sup> New Hampshire Police Academy. Brian Bodenrader has been an officer with the Salem Police Department since 1995 and was promoted to the rank of Master Patrolman in 2003. He is a graduate of the 105<sup>th</sup> New Hampshire Police Academy. Both Sergeant Decker and Officer Bodenrader have received training in the areas of firearms use, the justified use of deadly force, and the use of firearms in the nighttime.

### **Events Leading Up To Kip Pepin's Confrontation With Salem Police Officers**

On Thursday, February 3, 2005, just before midnight behind Players Bar on Route 97 in Salem, patrons Kip Pepin and Philip Bellerose got into a fistfight. The fight was broken up by the bar's bouncer, but they continued fighting shortly thereafter in the municipal

parking lot across the street from the bar. Charles O'Connell and William Alicea, who knew both Pepin and Bellerose, broke up the fight, but not before Bellerose sustained a serious injury to his right eye after being gouged in the eye and kicked in the face by Pepin. As Pepin was leaving the fight, he yelled something to the effect of, "I'm going to go get my gun." Bellerose, O'Connell and another individual got into Alicea's car in order to take Bellerose to the hospital. There were no police officers present for these events.

Alicea's vehicle was pulled over by Officer Paul Benoit who responded to the scene after a call to the police station about the fight. Officer Michael Kelly arrived at the traffic stop to back up Officer Benoit, as did Sergeant Decker. In the course of conversations with the individuals in Alicea's vehicle, Sergeant Decker obtained a description of the other individual, named "Kip," who was involved in the fight.<sup>1</sup>

Officer Mark Donahue indicated over the radio that he knew a "Kip" because he and Officer Brian Bodenrader had arrested Kip Pepin for driving as an habitual offender two nights before. Officer Donahue called Officer Bodenrader to ask him if he remembered Pepin's address on Pleasant Street, and Officer Bodenrader replied that Pepin lived at 18 Pleasant Street. Officer Bodenrader remembered the address because after Pepin's arrest two days prior, he had given Pepin and his friend a ride home from the police station.

### **Events At 18 Pleasant Street**

Sergeant Decker and Officer Joel Dolan were the first to arrive at 18 Pleasant Street. It was snowing heavily. The officers checked the side entrance of the house and knocked on the door, but all the interior lights were off. Sergeant Decker then followed fresh footprints in the snow that led to the front of the house. Sergeant Decker saw that the footprints did not

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<sup>1</sup> Due to the severity of Bellerose's facial injuries, he was transported to the hospital by ambulance from the scene of the vehicle stop.

go up to the porch of the residence but, rather, stopped at bushes in front of the house.

Thinking someone might have gone into the residence through a window, Sergeant Decker walked behind the bushes to the window and, at that point, saw two feet sticking out from underneath a bush. There was someone lying underneath the bush in a prone position (on his stomach) with his head facing the street and his feet closer to the house. The individual was later identified as Kip Pepin. Pepin was wearing black snow pants, a black jacket with "HJC" displayed on the back, and he wore winter boots. Pepin had not been wearing snow pants minutes earlier during the fight outside the bar.

Sergeant Decker identified himself as a Salem Police officer and repeatedly ordered Pepin to come out of the bushes. Pepin disregarded these commands. Officer Benoit and Officer Bodenrader then arrived at 18 Pleasant Street. Thereafter, Sergeant Decker, Officer Dolan, and Officer Benoit, all who were in full uniform, attempted to pull Pepin out of the bushes. As officers tried to haul him out, Pepin - who stood 5' 9" and weighed 208 lbs. - told the officers to leave him alone and said he did not want to hurt them. The officers were unable to pull Pepin out, possibly because he was grabbing on to the bush. Consequently, Officer Benoit struck Pepin in the right thigh several times in an effort to have Pepin comply, and Officer Dolan tried to pull Pepin out by the chest and neck, without success.

Officer Dolan was positioned on Pepin's right side. As Pepin resisted Officer Dolan's efforts to remove him, Pepin moved to his left, thereby revealing a long gun, later determined to be a Mossberg 12-gauge shotgun, underneath Pepin's body. Officer Dolan immediately yelled "gun" to alert the other officers of the weapon's presence. After this warning, Officer Dolan, Officer Benoit, and Sergeant Decker attempted to physically disarm Pepin. Officer Benoit struck and grabbed Pepin several times in the groin area in an effort to

subdue and disarm him; Officer Dolan wrestled with Pepin for control of the shotgun; and Sergeant Decker placed his knees on the back of Pepin's thighs to pin him while repeatedly yelling at Pepin to drop the gun.<sup>2</sup>

During this time, Pepin kept a grip on the shotgun and made numerous threats of violence towards the officers. Pepin told the police, "My finger is on the trigger," "I'm going to shoot you," "Here it comes," "It's gonna fuckin' go off," and "You're going to die." Officer Dolan told Pepin to drop the gun, and he repeatedly attempted to peel Pepin's finger away from the trigger. Each time he succeeded, Pepin placed his finger back on the gun. Officer Dolan expected to hear the "boom" of the shotgun going off at any moment, as did Officer Bodenrader. During Officer Dolan's struggle with Pepin, Sergeant Decker got onto his radio and called for all available police units to respond to the scene. He also instructed the Salem Fire Department to stage nearby.

During the struggle, Pepin used his head to apply pressure on Officer Dolan's forearms. This action forced Dolan to lose his grip on the gun and allowed Pepin to gain full control of the weapon. After losing control of the shotgun, Officer Dolan moved away from Pepin and yelled that he did not have the gun anymore and could not see the gun. While still possessing the shotgun, Pepin began to rise up from the prone position to his knees. Sergeant Decker repeatedly yelled, "Drop the weapon!" and Bodenrader yelled, "Stay down!" Pepin, however, continued to rise up and started turning his body clockwise. Officer Bodenrader and Sergeant Decker were positioned behind Pepin next to the house with no cover. As Pepin continued to turn, Sergeant Decker said, "Shoot" or "Shoot him," and both Decker and Bodenrader discharged their weapons towards Pepin.

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<sup>2</sup> When he heard officers' warnings about Pepin having a gun, Officer Bodenrader positioned himself to Sergeant Decker's right, behind Pepin in the corner of the house next to the porch.

In their interviews with investigators, Officers Benoit, Dolan, Decker, and Bodenrader all reported believing Pepin was going to fire his weapon when he began rising up. Neither Decker nor Bodenrader could see Pepin's arms or his gun. However, based on Officer Dolan's warnings, both believed that Pepin had a firearm. Sergeant Decker thought Pepin was going to shoot Officer Dolan, who – after losing control of the gun – was in front of Pepin and exposed to gunfire from Pepin. Officer Bodenrader thought Pepin was going to continue turning in his direction and shoot him.<sup>3</sup> Officer Benoit dove out of the way because he thought Pepin was going to shoot, and he did not know where the gun was pointed. Officer Dolan was down range from the shotgun and thought he was going to be shot.

Pepin was struck with seven bullets in the region of his buttocks and lower back. After the shots were fired, police continued to yell at Pepin to drop the gun. Officer Kelly and Officer Donahue arrived at 18 Pleasant Street just as the shots were fired. Both had heard Sergeant Decker yelling "Drop the gun!" repeatedly before shots were fired. After Pepin was shot, Officer Kelly immediately focused the beam of his flashlight on Pepin and yelled for him to show his hands. At that time, the landlord at 18 Pleasant Street, Sandra Wenning, appeared from the back of the house, yelling that she wanted to talk to Pepin. Officer Kelly ordered her to stay back because Pepin still had the gun. When she came closer, Officer Donahue grabbed Wenning and pulled her away from the scene for her own safety. When Pepin eventually showed his hands, Officer Kelly yelled that he could see Pepin's hands, and Officer Donahue ran in and removed Pepin from under the bushes. At that point, Sergeant Decker radioed for two ambulances to respond immediately, one for Pepin and one for Officer Benoit who had dislocated his thumb as a result of diving away from Pepin. When Pepin was searched by Officer Dolan after being pulled out, a number of

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<sup>3</sup> Officer Bodenrader, in fact, turned his body sideways in anticipation of return fire from Pepin.

green shotgun shells fell from Pepin's jacket pocket. The shells were consistent with the caliber of Pepin's shotgun.

### **Civilian Witnesses**

A number of neighbors saw or heard the events that transpired at 18 Pleasant Street that night. Sandra Wenning, Pepin's landlord who also lived at 18 Pleasant Street, was awakened at about 1:00 a.m. because she heard yelling outside the house. She and her husband Albert heard Pepin yell, "I passed the test, I passed the test," from the bushes next to the front door. Sandra walked outside using the back door and was headed toward the front of the house with Albert behind her when she was stopped by Officer Donahue who grabbed her and pulled her away from the front of the house and down Cornwell Court, a side street adjacent to 18 Pleasant Street. Just seconds later Sandra heard four shots fired. Albert heard three shots fired. Jim Ribaud, of 20 Pleasant Street, was also awakened that night by noises outside, and he observed an officer with his gun out yelling, "drop the fucking gun." Ribaud did not hear any shots fired but did see officers drag Pepin out of the bushes. Ribaud also observed the Salem Police immediately secure the scene after the EMTs left with Pepin. Russell Vaillancourt, of 15 Pleasant Street, observed four police cruisers pull onto Cornwell Court. He heard people yelling "drop the gun" repeatedly before four or five shots were fired. Wayne Lawlor of 21 Pleasant Street saw officers with their guns drawn around the bushes in front of 18 Pleasant Street and heard them continuously ordering Pepin to get out of the bushes. Lawlor also heard officers say to each other that Pepin had a gun. Lawlor observed the officers trying to remove Pepin from the bushes for about eight to ten minutes. Lawlor then heard someone yell "Jesus Christ" and, although he did not hear any shots, saw the officers drag Pepin out from under the bushes a short time later. Paul Connor



of 16 Pleasant Street was awoken after 1:00 a.m. and heard police officers at 18 Pleasant Street yelling, “Drop the gun. Drop the gun.” Connor heard this yelling go on for about ten minutes before hearing four or five shots fired. William Gianetti, of 16 Pleasant Street, was lying in bed when he heard someone yell, “He’s got a gun. He’s got a gun,” and then heard four shots fired immediately thereafter. Gianetti got out of bed and saw officers around the bushes at 18 Pleasant Street telling Pepin to drop the gun and then saw one of the officers drag Pepin out of the bushes.

### **Post-shooting Events**

As Pepin lay on the front lawn following the shooting, he was yelling words to the effect of, “God, it hurts,” and “I’m going to throw up.” Pepin was thrashing around and combative according to Salem Firefighters Michael Scanlon and Warren Seckendorf, who responded to the scene. Seckendorf attempted multiple times to put an oxygen mask on Pepin because Pepin said he was having a hard time breathing, but Pepin kept ripping the mask off his face. Pepin was taken from the scene by ambulance to Holy Family Hospital in Methuen, MA. Following treatment there, it was determined that Pepin needed to be transported to Massachusetts General Hospital in Boston. En route to MGH, however, Pepin went into cardiac arrest and was diverted to Winchester Hospital in Winchester, MA, where he died at 3:25 a.m.

### **Crime Scene**

Police secured the area surrounding 18 Pleasant Street, and the State Police Major Crime Unit subsequently processed the scene for evidence. From the front lawn, Major Crime Unit evidence technicians recovered the Mossberg shotgun the defendant had possessed. The weapon was loaded, the safety was off, and it was ready to fire. Additionally

the Major Crime Unit recovered numerous shotgun shells the defendant had possessed at the time of the encounter. A search of Pepin's apartment at 18 Pleasant Street revealed two empty shotgun shell boxes and a gun cleaning kit. Also discovered in Pepin's apartment were a black leather jacket with bloodstains, a pair of black shoes with bloodstains, and five separate bloodstains in the mudroom and kitchen of the apartment.

### **Autopsy**

An autopsy of Kip Pepin was conducted by Richard J. Evans, MD of the Massachusetts Office of the Chief Medical Examiner. Dr. Evans concluded that Pepin died as a result of multiple gunshot wounds. Pepin was shot seven times, and the entrance wounds were in the mid-lower back, the right back, the right mid-back, the right hip area, the medial upper right buttock, the mid-right buttock, and the lateral right buttock. Toxicological testing of blood taken from Pepin at autopsy revealed an ethanol level of 77 mg/dL (0.077 BAC) at the time of his death approximately two hours after he was shot.

### **Forensics**

Two bullets were recovered from the lawn area of 18 Pleasant Street, and five bullets were recovered from Pepin's body at autopsy. Because of deformities in the fired bullets, they lacked sufficient individual characteristics to determine from which firearm each was discharged.<sup>4</sup> A New Hampshire State Police Crime Laboratory criminalist determined that the recovered bullets could have been fired from the barrel of either Sergeant Decker or Officer Bodenrader's firearms, based on similarities of class characteristics. Five of the seven discharged cartridge cases were located at the shooting scene. Ballistics testing of the

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<sup>4</sup> Sergeant Decker and Officer Bodenrader carried department-issued Glock, model 22, caliber .40 S&W, semiautomatic pistols.

five cartridges revealed that two of the cartridges were discharged from Officer Bodenrader's pistol and three were discharged from Sergeant Decker's pistol.

### **Legal Analysis**

Under New Hampshire law, Sergeant Decker and Officer Bodenrader used deadly force when they shot Kip Pepin. RSA 627:9, II defines "deadly force" as:

Any assault or confinement which the actor commits with the purpose of causing or which he knows to create a substantial risk of causing death or serious bodily injury. Purposely firing a firearm capable of causing serious bodily injury or death in the direction of another person...constitutes deadly force.

Appropriate circumstances justify the use of deadly force by law enforcement officers. Two separate provisions of RSA 627:5, entitled "Physical Force in Law Enforcement," apply to this case:

- II. A law enforcement officer is justified in using deadly force only when he reasonably believes such force is necessary:
  - a. To defend himself or a third person from what he reasonably believes is the imminent use of deadly force; or
  - b. To effect an arrest or to prevent the escape from custody of a person whom he reasonably believes
    1. has committed or is committing a felony involving the use of force or violence, is using a deadly weapon in attempting to escape or otherwise indicates that he is likely to seriously endanger human life or inflict serious bodily injury unless apprehended without delay; and
    2. he has made reasonable efforts to advise the person that he is a law enforcement officer attempting to effect an arrest and has reasonable grounds to believe that the person is aware of these facts.

### **Application of RSA 627:5, II (a)**

After seriously injuring another man outside the bar, Pepin proclaimed that he was going to get his gun. Pepin proceeded to his apartment, put on snow attire, retrieved a loaded shotgun, went back outside, and concealed himself under bushes while in possession of the weapon. In light of these actions, it is reasonable to conclude that Pepin was lying in wait either to harm or to threaten someone with the gun.

Once Pepin was located, the police officers at the scene made reasonable efforts short of using deadly force to remove Pepin from the bushes without incident. Police were hampered in their efforts, however, because Pepin had concealed himself in a location where it was difficult for police to gain control of him. Additionally, Pepin physically resisted all efforts of the officers to arrest and disarm him. Pepin could have given up at any point during the confrontation, as he was ordered to, but he chose not to. Instead, his verbal and physical actions escalated an already dangerous and provocative situation and heightened the risk to the officers' safety.

Section II (a) of RSA 627:5 provides that a police officer is "justified in using deadly force only when he reasonably believes such force is necessary [t]o defend himself or a third person from what he reasonably believes is the imminent use of deadly force." Thus, with respect to both Sergeant Decker and Officer Bodenrader, his use of deadly force was justified if he reasonably believed that the use of deadly force against himself or a third party was imminent and that the use of deadly force was necessary to protect himself or a third party.

When Sergeant Decker and Officer Bodenrader shot Pepin, it was reasonable for them to believe that Pepin's use of deadly force was imminent. Pepin had struggled with several police officers and repeatedly threatened to shoot them. After Officer Dolan

discovered Pepin was armed with a shotgun, Pepin ignored the officers' repeated orders to surrender the weapon. Pepin had his finger on or near the trigger of the shotgun and physically resisted Officer Dolan's attempts to remove his finger from the area of the trigger. Immediately before Sergeant Decker and Officer Bodenrader fired their weapons, Pepin had physically resisted Officer Dolan's efforts to secure the gun and had, in fact, broken free from Officer Dolan and started to rise up from his prone position and turn in the direction of Decker and Bodenrader. Despite Sergeant Decker's orders to drop the gun and Officer Bodenrader's commands to stay down, Pepin continued to rise and turn while possessing the gun.

Given that Pepin had disregarded all orders to drop the weapon and had threatened to shoot the officers at the scene, Sergeant Decker and Officer Bodenrader's belief that Pepin was about to use imminent deadly force against them or others was reasonable. As Pepin continued to move upward and in the officers' direction, he disregarded orders to drop the gun and stay down. Under these circumstances, the officers were not required to wait until Pepin had drawn a bead on them or others before using deadly force.

Furthermore, the officers were not excessive in the number of shots they fired at Pepin. The officers knew Pepin was armed, and once they concluded his use of deadly force was imminent, they were justified in using deadly force themselves to neutralize the threat he presented. Both officers followed their training by shooting at the "center of mass" of the person posing the threat. As a wounded person is still capable of discharging a weapon and causing death, the officers were permitted to use the deadly force necessary to stop the threat presented by Pepin's actions. A total of seven shots fired in rapid succession by two officers was reasonable under the circumstances.

It is probative in assessing Sergeant Decker and Officer Bodenrader's accounts that when they discharged their weapons towards Pepin, Officer Benoit was diving behind the stairs of the house and Officer Dolan likewise was seeking cover. Officer Benoit and Officer Dolan's actions of physically seeking cover supports the finding that Sergeant Decker and Officer Bodenrader believed Pepin was about to open fire. While Benoit and Dolan were in a position to move away from Pepin, Sergeant Decker and Officer Bodenrader were not, as they were positioned behind Pepin and up against the residence with no cover. Thus, under the circumstances, it was reasonably necessary for Sergeant Decker and Officer Bodenrader to shoot Pepin to protect themselves and their fellow officers. Accordingly, both Sergeant Decker and Officer Bodenrader were justified under RSA 627:5, II(a).

**Application of RSA 627:5, II(b)**

RSA 627:5, II(b) provides that a police officer:

is justified in using deadly force only when he reasonably believes such force is necessary [t]o effect an arrest or prevent the escape from custody of a person whom he reasonably believes [h]as committed or is committing a felony involving the use of force or violence, is using a deadly weapon in attempting to escape, or otherwise indicates that he is likely to seriously endanger human life or inflict serious bodily injury unless apprehended without delay; and (the law enforcement officer) had made reasonable efforts to advise the person that he is a law enforcement officer attempting to effect an arrest and has reasonable grounds to believe that the person is aware of these facts.

Applying RSA 627:5, II(b), Sergeant Decker and Officer Bodenrader's actions were lawful. The officers were at Pepin's residence to locate him in connection with a serious assault he had committed minutes earlier. When he initially discovered Pepin in the bushes at 18 Pleasant Street, Sergeant Decker identified himself as a Salem Police officer. Thereafter, officers repeatedly commanded Pepin to come out of the bushes. Under these

circumstances, Pepin clearly knew that Sergeant Decker, Officer Bodenrader, Officer Dolan, and Officer Benoit, all in full uniform, were police officers seeking to arrest him.

When they learned Pepin was armed, the officers attempted to verbally persuade him to surrender his weapon and exercised options short of using deadly force. For example, Officer Benoit struck Pepin several times in an effort to have him release the gun, and Officer Dolan attempted to wrestle the gun away from Pepin. Non-deadly force ceased to be an option, however, when Pepin wrested control of the shotgun away from Officer Dolan, began to rise from his prone position while in complete control of the gun, and disregarded orders to drop the weapon and stay down. Moreover, before rising up, Pepin had disregarded prior repeated orders to drop the weapon, and he had told the officers he was going to shoot them. These words and actions gave a clear indication to the officers that, if allowed to, Pepin was going to shoot one or more of them. By his words and actions Pepin demonstrated that under RSA 627:5, II(b), “he (was) likely to seriously endanger human life or inflict serious bodily injury unless apprehended without delay.” Therefore, under RSA 627:5, II (b), Sergeant Decker and Officer Bodenrader were justified in using deadly force to apprehend Pepin.

### **Conclusion**

Based on a careful examination of the circumstances surrounding the incident, as described in this report, the Attorney General has concluded that Sergeant Decker and Officer Bodenrader reasonably responded to the threat of imminent deadly force from Kip Pepin by using deadly force in response. Accordingly, the Attorney General has concluded that the officers’ use of force was justified under RSA 627:5.